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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/037,822	03/10/1998	SATORU MOTOYAMA	25484.00643	7579
25224	7590	11/16/2005	EXAMINER	
MORRISON & FOERSTER, LLP 555 WEST FIFTH STREET SUITE 3500 LOS ANGELES, CA 90013-1024			WILLETT, STEPHAN F	
		ART UNIT	PAPER NUMBER	2142

DATE MAILED: 11/16/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/037,822
Filing Date: March 10, 1998
Appellant(s): MOTOYAMA, SATORU

Glen Kubota
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/22/05.

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(1) Real Party in Interest

Examiner agrees with the statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

Examiner agrees with the statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

Examiner agrees with the statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

Examiner agrees with the appellant's statement of the status of amendments contained in the brief is correct.

(5) Summary of Claimed Subject Matter

Examiner agrees with the summary of the *claimed subject matter* contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed*

Examiner agrees with the appellant's statement of the grounds of the rejection in the brief is correct.

(7) *Claims Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Evidence Relied On*

Examiner agrees with the statement identifying the evidence relied on contained in the brief is correct.

(9) *Grounds of Rejection*

Claim Rejections - 35 USC § 112

1. The 112 rejection is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline et al. with Patent Number 5,883,957 in view of Isozaki with Patent Number 5,999,905.

4. Regarding claims 41, 45-46, Moline teaches a quasi-real time or streaming MIDI music playing technique. Moline teaches receiving music data over a public communications line or the Internet, col. 8, lines 7-11, 63-67. Moline teaches judging whether data is specific data as "type", col. 9, lines 43-46 from an external device based on a browser on the Internet. Moline teaches receiving first time information as "MIDI file reader includes two subcomponents ... parser reads events in order from track, each event of course includes event message and elapsed time descriptor", col. 6, lines 44-48, and particularly, an elapsed time descriptor is converted to time stamp, col. 6, lines 58-59 and in more detail, col. 6, lines 51-55. Moline teaches rectifying a predetermined time/value [time delay] from time information as "the delay time period is added to the server start time", col. 13, lines 10-11 or "the amount of track that must be accumulated before receiver begins playing the track is determined by a delay parameter set by the user of receiver ... to provide a delay parameter to receiver 619(1)", col. 12, lines 1-6, "delay 617 in Fig. 6", col. 11, line 67, and applies this to only first received data, col. 8, lines 47-52, in other words does not set the first time information if the data is not the first received data. Moline teaches storing means for temporarily storing the data received by said reception means as "MIDI stream generator keeps track of the last

event that it output, the amount of time that has actually elapsed since it began playing the track, and the total amount of time specified by the elapsed time indicators in events played thus far", col. 6, lines 26-31, and "the result of this operation is an event, which is then added to stored track in memory" at col. 6, lines 53-54. Moline teaches processing means for starting the processing of the data temporarily stored in said memory when said second time information reaches the first as "output event messages until either an event is reached whose time stamp is greater", and "this incremental addition of parts", col. 7, 8, lines 15-16, 4-6, "the delay varies as the preferred embodiment waits to begin [subtracts] playing track until enough of track has accumulated", col. 11, lines 59-64, "beginning at the start of stored track, the time stamp of each event is added to the server start time and subtracted from the play time", col. 13, lines 12-14 and "MIDI stream generator generates MIDI stream from stored track as follows: ... set the timer and wait for it to expire again", col. 7, lines 10-20. Moline teaches specific or first data as "type" of data, col. 9, lines 42-43. Moline teaches "when the browser receives", col. 9, line 42 which means if it is determined that the type of data is "first" or encrypted, or not completely received, Web enabled, or of a certain format, col. 5, lines 51-61 then the data may or may not be delayed. Also, Moline teaches specific or first data as "the music begins with the part contained in the first track to be received", col. 8, lines 1-2. Moline teaches the invention in the above claims except for explicitly teaching a second time sequentially or by name, however, Moline waits the said second time until the track is played. In that Moline operates to buffer data for quasi-real time play the artisan would have looked to the computer data streaming arts for details of buffering signals.

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In that art, Isozaki, a related data buffering system, teaches a chaining of data streams. Isozaki specifically teaches "a start time", col. 11, lines 2-3 which is based on a first or "present time code", col. 8, line 50. A second time is taught. The motivation to incorporate a stated second time insures that data is generated at the right time. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the computed time as taught in Isozaki into the MIDI player described in the Moline patent because Moline operates with delay times to achieve streaming data and Isozaki suggests that streaming of data can be obtained with a second computed time. Therefore, by the above rational, the above claim(s) are rejected.

5. Regarding claims 42, Moline teaches an absolute time added to said first time as "time stamp contains the sum of the elapsed times in all of the time descriptors from the beginning of [the] track", col. 6, lines 53-54.

6. Regarding claims 43, Moline teaches rectifying or delaying said first time, col. 13, lines 26-27.

7. Regarding claims 44, Moline teaches a determiner that calculates the delay time, col. 11, lines 41-44, 62-66, in accord with memory capacity col. 7, lines 1-4, col. 12, lines 64-66 and col. 13, lines 4-6.

8. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline et al. with Patent Number 5,883,957 in view of Shioda with patent Number 5,430,243.

9. Regarding claims 41, 45-46, Moline teaches a quasi-real time or streaming MIDI

music playing technique. Moline teaches receiving music data over a public communications line or the Internet, col. 8, lines 7-11, 63-67. Moline teaches judging whether data is specific data, col. 9, lines 43-46. Moline teaches receiving first time information as "MIDI file reader includes two subcomponents ... parser reads events in order from track, each event of course includes event message and elapsed time descriptor", col. 6, lines 44-48, and particularly, an elapsed time descriptor is converted to time stamp, col. 6, lines 58-59 and in more detail, col. 6, lines 51-55. Moline teaches subtracting a predetermined time [time delay] from time information as "the delay time period is added to the server start time", col. 13, lines 10-11 or "the amount of track that must be accumulated before receiver begins playing the track is determined by a delay parameter set by the user of receiver", col. 12, lines 1-3, "delay 617 in Fig. 6", col. 11, line 67. Moline teaches storing means for temporarily storing the data received by said reception means as "MIDI stream generator keeps track of the last event that it output, the amount of time that has actually elapsed since it began playing the track, and the total amount of time specified by the elapsed time indicators in events played thus far", col. 6, lines 26-31, and "the result of this operation is an event, which is then added to stored track in memory" at col. 6, lines 53-54. Moline teaches processing means for starting the processing of the data temporarily stored in said memory when said second time information reaches the first as "output event messages until either an event is reached whose time stamp is greater", and "this incremental addition of parts", col. 7, 8, lines 15-16, 4-6, "the delay varies as the preferred embodiment waits to begin [subtracts] playing track until enough of track has accumulated", col. 11, lines 59-64,

"beginning at the start of stored track, the time stamp of each event is added to the server start time and subtracted from the play time", col. 13, lines 12-14 and "MIDI stream generator generates MIDI stream from stored track as follows: ... set the timer and wait for it to expire again", col. 7, lines 10-20. Moline teaches specific or first data as "type" of data, col. 9, lines 42-43. Moline teaches "when the browser receives", col. 9, line 42 which means if it is determined that the type of data is "first" or encrypted, or not completely received, Web enabled, or of a certain format, col. 5, lines 51-61 then the data may or may not be delayed. Also, Moline teaches specific or first data as "the music begins with the part contained in the first track to be received", col. 8, lines 1-2. Moline teaches the invention in above claims except for explicitly teaching a second time, however, Moline waits the said second time until the track is played. In that Moline operates to buffer data for quasi-real time play the artisan would have looked to the computer data streaming arts for details of buffering signals. In that art, Shioda, a related data buffering system, teaches a "basic delay time", col. 4, lines 37 in order to delay "a voice and/or musical tone produced by an electronic musical instrument", col. 4, lines 37-38. Shioda specifically teaches that "a basic delay time-calculating routine for calculating a basic delay time based on a timing clock of a MIDI signal is started", col. 4, lines 46-48 and col. 8, lines 28-30. A timing clock and second time is taught that is used to determine delay times. Further, Shioda suggests that "an excellent repeat effect to the performance", col. 1, lines 65-66 will result from applying the delay times. The motivation to incorporate a delay and second time insures that a reference time is used to accurately apply delay times. Thus, it would have been obvious to one of

ordinary skill in the art to incorporate the delay and second time as taught in Shioda into the MIDI player described in the Moline patent because Moline operates with delay times to achieve streaming data and Shioda suggests that streaming of data can be obtained with timers and set times. Therefore, by the above rational, the above claim(s) are rejected.

10. Regarding claims 42, Moline teaches an absolute time added to said first time as "time stamp contains the sum of the elapsed times in all of the time descriptors from the beginning of [the] track", col. 6, lines 53-54.

11. Regarding claims 43, Moline teaches rectifying or delaying said first time, col. 13, lines 26-27.

12. Regarding claims 44, Moline teaches a determiner that calculates the delay time, col. 11, lines 41-44, 62-66, in accord with memory capacity col. 7, lines 1-4, col. 12, lines 64-66 and col. 13, lines 4-6.

(10) Response to Argument

13. The applicant presently claims a method of simply adjusting start times to achieve delayed real streaming data. It is suggested more detail is claimed into what types of data is delayed or not. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

A. Claims 41-46 Are Unpatentable Over Moline And Shioda

14. In response to applicant's Brief that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e.,

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"elapsed time descriptor", Paper Dated 8/22/05, Page 6, line 11; "used to set the time of the client", Paper Dated 8/22/05, Page 6, line 19; "to set the time of the receiver 619", Paper Dated 8/22/05, Page 7, lines 5-6; and "based on the time information of the first received data", Paper filed 8/2/05, Page 11, line 5 are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

15. Applicant suggests "what is important here is that the time of the MIDI events, i.e., the time stamps, are not used to set the time of the receiver 619", Paper Dated 8/22/05, Page 7, lines 12-13, "even if the time of the receiver was somehow set by the sum of a given time stamp", Paper Dated 8/22/05, Page 7, lines 20-21. Moline teaches "the amount of track that must be accumulated before the receiver begins playing the track is determined by a delay parameter set by the user of receiver ... to provide a delay parameter to receiver 619(1)", col. 12, lines 1-6. Thus, arguably the delay time/time stamp is also sent to the receiver and these times are used to arguably "set the time of the receiver". Thus, Applicant's arguments can not be held as persuasive regarding patentability.

16. Applicant adds "there is no disclosure or suggestion that this setting is based *only* on the time stamp of the first received MIDI event", Paper Dated 8/22/05, Page 7, lines 21-22. Moline teaches the "MIDI stream generator keeps track of the last event that it output, the amount of time that has actually elapsed since it began playing the track, and the total amount of time specified by the elapsed time indicators in events

played thus far", col. 6, lines 26-31, and the total amount of time is based on "the first received MIDI event" as alluded to by "sum" with "even if the time of the receiver was somehow set by the sum of a given time stamp", Paper Dated 8/22/05, Page 7, lines 20-21. Recognize the secondary references where to highlight the nomenclature "second time information", since Moline does not specifically describe other time information sequentially as "second". Thus, Applicant's arguments can not be held as persuasive regarding patentability.

17. Applicant again suggests "Shioda fails to even remotely disclose or suggest that the delay time is used to set the time of the effect-creating device", Paper Dated 8/22/05, Page 8, lines 14-15. As described above, the claims do not state "the delay time is used to set the time of the effect-creating device", and arguably any of the devices' times are also set as argued so the music is correctly played. Again arguably the time is set in or on or of a device, or of the music, or the encoding/decoding, or the sending/receiving, or any of a number of different processes or devices involved in receiving and playing music. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

B. Claims 41-46 Under 103(a) are Unpatentable Over Moline And Isozaki

18. Applicant again suggests "Isozak is neither used to set the time of the apparatus ...", Paper Dated 8/22/05, Page 10, lines 4-5. As described above, the claims do not state "the delay time is used to set the time of the effect-creating device", and arguably any of the devices' times are also set as argued so the music is correctly played. The above analysis can similarly be applied to Isozaki and is supported by applicant's

admission that "a user sets a 'start time'", Paper Dated 8/22/05, Page 9, lines 25-26, again arguably the time is set in or on or of a device, or of the music, or the encoding/decoding, or the sending/receiving, or any of a number of different processes or devices involved in receiving and playing music. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

19. Applicant again suggests "nor is it[the start time] based on the time information of the first received data", Paper filed 8/2/05, Page 11, line 5. However, Isozaki teaches "a start time", col. 11, lines 2-3 which is based on a first or "present time code", col. 8, line 50, and is based on numerous other times/delays, etc. taught in Isozaki. Isozaki was cited just to clearly reiterate a second or start time is based on a first or previous time. Clearly the times are interdependent. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

(11) *Related Proceedings Appendix*

Examiner agrees with the statement identifying the *related proceedings* contained in the brief is correct.

Thus, the prior art, as applied, fully suggest and teaches the limitations disclosed and claimed by the Appellant and Appellant's arguments cannot be held persuasive regarding patentability with regard to these limitations.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephan Willett, Patent Examiner

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Conferees:

Andrew Caldwell



Robert Harrell



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